IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.92 OF 2006

Dashrath Sharma .. Petitioner
Versus
Lallan Sharma .. Respondent

Mr.Sanjay i/b. Ravi Rattesar for petitioner
Mr.Suresh Gole for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 17th January 2006.

P.C.

. Heard learned Counsel for petitioner and Mr.Gole for proposed defendant (respondent No.3).

2. Original plaintiff is the petitioner. He is aggrieved by an order passed by the trial court on chamber summons No.899 of 2005 in short cause suit No.2168 of 2001 instituted by him. Order under challenge dated 14th December 2005

rejects this chamber summons.

3. Chamber summons prays for amendment to the plaint in terms of the schedule. The schedule to the said chamber summons sets out the proposed amendment including addition of third respondent as party defendant to the suit. It also sets out the proposed averments pertaining to deletion of words "*joint-tenant and/or co-tenant*". These averments are made, according to the plaintiff in para 13 and in the prayers to the plaint. He, thereafter, proposes to add para 13(a) to set out that even after the suit was earlier decreed, decree is set aside in F.A. by this court.

4. Mr.Gole contends that the order passed by this Court setting aside the decree of the trial court passed earlier in this suit, categorically states that issue which survives is declaration of joint ownership of business between defendants

and plaintiff who are impleaded as parties. Issue of joint tenancy is specifically given up. Mr.Gole then contends that if that issue is given up and that the proposed defendant has no connection with the business that is being carried on, then his impleadment, merely on the ground that he has acquired some interest in the property viz., the shop is not sufficient to implead him as a party defendant, more so, when he is not a necessary party. Further, he submits that as far as the business is concerned that also has not been carried on by the proposed defendant.

5. Learned Counsel appearing for petitioner brings to my notice the order passed by this Court and submits that earlier judgement and decree is set aside. Suit is remanded back to the trial court for framing necessary issues and deciding the same. If the entire decree passed earlier is set aside and suit has to be heard

afresh, consequent upon remand, then, according to him, it was plain duty of the court to consider application for amendment on the touch stone of Order VI Rule 17 of C.P.C. and also order 1 Rule 10 thereof.

6. Upon consideration of the entire materials including the chamber summons and schedule thereto, in my view court below was in obvious error in rejecting the chamber summons by observing that it is not necessary to implead respondent No.3 as party defendant. Ultimately, from a perusal of the order passed by this Court it is clear that suit is remanded in its entirety. It is upon taking note of the grievance before this Court that the declaration of joint ownership of business has to be decided and it is not permissible to decide the suit in the manner done earlier. Once that is the fact situation and the petitioner contending that the premises have been disposed of during the

pendency of litigation, with a view to avoid multiplicity of proceedings, that the presence of respondent No.3 is necessary. That it was the plain duty of the court to consider this aspect and pass appropriate ordes. It is not as if entire chamber summons should have been granted.

7. In my view, the court below committed an error in rejecting chamber summons to the extent it seeks impleadment of third respondent as party defendant. Chamber summons should have, therefore, been allowed atleast to the extent of adding Item Nos. 1 and 4 of Schedule A.

8. In the light of the above, order passed by the trial court is set aside. Chamber summons stands allowed in terms of prayer clause (a). Plaint be amended accordingly only in terms of schedule A - Items 1 and 4. Item Nos. 2 and 3 to Schedule A are not allowed to be incorporated and the chamber summons is dismissed to that

extent only. No costs. Petition disposed of.

(S.C.DHARMADHIKARI, J)